

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| Service Rules for the 698-746, 747-762 and 777-792 MHz Bands |) | WT Docket No. 06-150 |
| Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems |) | CC Docket No. 94-102 |
| Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones |) | WT Docket No. 01-309 |
| Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services |) | WT Docket No. 03-264 |
| Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules |) | WT Docket No. 06-169 |
| Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band |) | PS Docket No. 06-229 |
| Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010 |) | WT Docket No. 96-86 |
| Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule |) | WT Docket No. 07-166 |

REQUEST FOR WAIVER OF COMMISSION RULES

Harris County Information Technology Center
Steven W. Jennings, Chief Information Officer

I. INTRODUCTION

Harris County Information Technology Center hereby respectfully requests that the Federal Communications Commission (“Commission” or “FCC”) grant a waiver of the prohibition on new operations to permit deployment of Harris County Information Technology Center’s already-planned system. The Commission has prohibited “authorization . . . of any new narrowband operations in Channels 63 and 68, or in the upper 1 megahertz of channels 64 and 69,” after August 30, 2007.¹ A recent public notice further states that narrowband equipment may be placed into operation after August 30, 2007, but only in the new consolidated narrowband block.² Thus, Harris County Information Technology Center respectfully requests that the Commission grant a waiver of the prohibition to permit deployment of new equipment, including handsets and base stations, after August 30, 2007 to operate in conjunction with Harris County Information Technology Center’s already-licensed 700 MHz system.³ Without such a waiver, the Commission’s policy poses a significant threat to Harris County Information Technology Center’s plans to complete implementation of a needed new life-saving communication system in its jurisdiction.

¹ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Second Report and Order, FCC 07-132 (rel. Aug. 10, 2007) (“Order” or “Second Report and Order”).

² New Public Safety Narrowband Operations Outside of the 700 MHz Consolidated Block Prohibited as of August 30, 2007, Public Notice, PS Docket No. 06-229, WT Docket No. 96-86, DA 07-3644 (August 16, 2007).

³ [LICENSEE] recognizes that, pursuant to the Order, this new equipment will not be eligible for relocation funding. [LICENSEE] disagrees with this policy against relocation funding, but notes that this Request for Waiver does not address reimbursement issues. Thus, [LICENSEE] seek this waiver request without prejudice to any future motions opposing the policy for relocation funding.

II. BACKGROUND

Harris County Information Technology Center is a provider of communications for multi jurisdiction Public Safety agencies. Harris County Information Technology Center's jurisdiction includes the 13 Texas Counties within the Houston-Galveston Area Council of Government. Currently, Harris County Information Technology Center is in the process of implementing a vital communication system on the current 700 MHz narrowband spectrum under call sign WPTZ776. Under this call sign(s) Harris County Information Technology Center is authorized 30 sets of frequencies. Because of the complicated nature of this process, Harris County Information Technology Center started planning approximately 3 years ago ago. Harris County Information Technology Center sought budget and grant approval in January 2005 and placed orders for equipment in May 2005. Since then, Harris County Information Technology Center has deployed a Master Control Switch and six each (6) tower sites consisting of a total number of thirty (30) Motorola GTR8000 fixed 700 MHz repeaters. This equipment was actively on the air and working prior to August 30, 2007. Full deployment of this new system was scheduled for March 1, 2008 but has been put on hold due to the recent Public Notice. We have the 6 sites of this radio infrastructure already installed along with an additional 2 tower sites worth of brand new Motorola equipment still in our facility waiting to be deployed onto 700 MHz. We also were waiting on several more sites for grant approval before ordering these additional expansion sites from Motorola. Harris County Information Technology Center deployed the P25 Master Control Switch and 6 site of 700 MHz prior to the August 30, 2007 deadline. This project came to a halt since the Public Notice was issued due to the unknown of what frequencies will be available for the thousands of subscriber units we must program. Given the critical need for interoperable communications in Harris County Information Technology Center, the inability to fully utilize

the planned system threatens the safety and lives of Harris County Information Technology Center's first responders and the health and property of the public they serve.

III. THE COMMISSION SHOULD GRANT HARRIS COUNTY A WAIVER OF THE COMMISSION'S RULE PROHIBITING NEW EQUIPMENT.

Under Section 1.3 of the Commission's rules,⁴ the Commission may exercise its discretion to waive a rule for "good cause shown."⁵ A waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will help serve the public interest.⁶

The waiver process allows the Commission to "maintain the fundamentals of principled regulation without sacrifice of administrative flexibility and feasibility."⁷ In deciding whether or not to grant specific waiver requests, the Commission has indicated it must "take into account considerations of hardship, equity, or more effective implementation of overall policy" in its broader quest for regulation in the "public interest."⁸ As explained below, grant of Harris County Information Technology Center's request would serve policy objectives of the Commission, particularly the deployment of spectrum to meet public safety needs.

Harris County Information Technology Center will undergo significant hardship if the FCC does not waive the new rule to permit Harris County Information Technology Center to deploy its equipment as planned. As noted above, Harris County Information Technology Center has invested significant time and money in planning a new P25 Level 6 interoperable

⁴ 47 C.F.R. § 1.3.

⁵ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Petition of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity or, in the Alternative, Various Other Relief*, Order, 14 FCC Rcd 6806, ¶ 11 (1999).

⁶ *Id.* (citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

⁷ *WAIT Radio*, 418 F.2d at 1159.

⁸ *Id.*

communications system in 700 MHz spectrum formerly allocated for public safety narrowband communications. Specifically, Harris County Information Technology Center has invested approximately \$5,600,000 and three years planning and implementing its new system. This new system is designed to provide Level 6 Interoperability. We presently have 512 different agencies on this system that need a higher level of interoperability. The new P25 system will also provide additional features like programming over the air, high performance data and much better frequency efficiency than our older analog system.

It was impossible for Harris County Information Technology Center to fully deploy this system by the August 30, 2007 deadline. By the time the public notice was issued, Harris County Information Technology Center was left with two weeks to deploy the remaining infrastructure as well as the subscriber units. Harris County Information Technology Center has 9,732 subscriber units that are capable and ready to be programmed for 700 MHz P25 utilization. There are also 2 new additional sites comprising of 19 channels that are still sitting in our warehouse waiting to be deployed if frequencies were available. The FCC's new rule forces Harris County Information Technology Center to continue to operate on the older analog system which lacks the interoperability and rich feature sets that the new state of the art P25 interoperable communications networks affords us. Majority of this equipment was bought with Federal grant money which has a short timeline for deployment. This would not only deplete precious funding, but also significantly diminish Harris County Information Technology Center's ability to adequately meet its immediate needs for vital mission-critical voice communications.

Second, equity weighs in favor of granting Harris County Information Technology Center a waiver of the new prohibition on deploying new equipment in eight of the twelve megahertz

that is currently allocated for public safety narrowband use. Harris County Information Technology Center has planned and designed its system based on a review of Commission rules and an expectation that such rules would remain unchanged without *significant* notice to and a reasonable period of transition for public safety entities such as Harris County Information Technology Center. The Commission has instead given Harris County Information Technology Center less than two weeks to either finish deploying an extensive, complicated system ahead of schedule or forfeit months, and even years of time, money and resources spent deploying this system. A freeze on equipment was not found anywhere in the proposed rules or arguably the Order and first clearly appeared in the public notice reminding public safety about the new rules. Harris County Information Technology Center did not anticipate such a harsh result. Given Harris County Information Technology Center's reasonable reliance on the Commission's previous plan and associated rules and the fact that Harris County Information Technology Center could not have fairly anticipated this new requirement, both equity and responsible public policy dictate that the Commission grant Harris County Information Technology Center a waiver of the new policy to permit deployment of Harris County Information Technology Center's planned P25 Level 6 interoperability 700 MHz system.

Lastly, a waiver of the rules for Harris County Information Technology Center would be more effective in implementing the Commission's goal of improving public safety resources. As noted above, Harris County Information Technology Center has spent significant resources developing this system, which is partially complete. Harris County Information Technology Center anticipates an immediate need for the system and rendering it useless would be directly contrary to any goal of improving public safety resources. Further, the Commission created the general prohibition on new equipment in order to help define and contain costs of relocation.

Granting Harris County Information Technology Center's waiver request, however, will not go against this goal; under the rules adopted in the Order, Harris County Information Technology Center's request does not affect the cost of relocation because the equipment deployed after August 30, 2007 would not be eligible for relocation funding. Even so, because Harris County Information Technology Center can fairly estimate which equipment will be deployed and will need to be relocated, certainty and clarity of costs would not be impacted.

Moreover, although these goals of defining and containing costs are important, they do not outweigh Harris County Information Technology Center's immediate need to access to viable, usable spectrum in the next few years, or the public's ultimate interest in the protections afforded by such access. Harris County Information Technology Center's system will fill an immediate need to help save lives and property in the short term. Allowing Harris County Information Technology Center to deploy its equipment as planned will further the Commission's goal of helping public safety provide the most effective and efficient communications for the American public.

IV. CONCLUSION

Harris County Information Technology Center respectfully requests that the Commission grant a waiver of the prohibition on deploying new equipment to permit Harris County Information Technology Center to deploy new equipment for existing operations outside of the consolidated narrowband blocks. Harris County Information Technology Center's circumstances warrant a deviation from this rule and such deviation will help serve the public interest.

Respectfully Submitted,

By: 

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